Supreme Court, U. S.
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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

No. 78-1683

MADALYN MURRAY O'HAIR,
and
JON GARTH MURRAY, ET AL.

Petitioners,

v.

W. MICHAEL BLUMENTHAL,
SECRETARY OF THE TREASURY, ET AL

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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TABLE OF CONTENTS

Page

Opinions Below 7
Jurisdiction 8
Questions Presented 8
Constitutional Provisions Involved 9
Statement of the Case 9
Reasons for Granting this Writ 11
Conclusion 15

Appendix
Constitutional Provisions and Statutes Involved 3a
Order of District Court 7a
Judgment of District Court 8a
Judgment and Opinion of U.S. Court of Appeals Fifth Circuit 11a
Judgment of U.S. Court of Appeals, Fifth Circuit 12a

TABLE OF CASES AND AUTHORITIES

Allen v. Morton, 495 F2d 65 13
Committee for Public Education and
Religious Liberty v. Nyquist 413 U.S. 756 10
Engle v. Vitale, 370 U.S. 421 14
Epperson v. Arkansas, 393 U.S. 421 14
Everson v. Bd. of Educ., 330 U.S. 1 14
14Lemon v. Kurtzman, 403 U.S. 602 14
Malnak v. Yogi, 592 F2d 197 14
Nicholson v. Alabama Bar Association, 338 F2d 48 14
Russo v. Central School District, 469 F2d 623 13
School Dist. of Abington v. Schempp, 374 U.S. 203 14
Sheldon v. Fannin, 221 F. Supp 766 14
Sherbert v. Verner, 374 U.S. 398 14
Tinker v. Des Moines, 393 U.S. 503 14
Torcaso v. Watkins, 364 U.S. 488 14
West Virginia State Bd. of Educ. v. Barnett, 319 U.S. 624 14
Wooley v. Maynard, 430 U.S. 705 13

UNITED STATES CONSTITUTION

First Amendment 9

STATUTES

18 U.S.C. sec. 331 and 333 9
31 U.S.C. sec. 324 and 324(a) 8
36 U.S.C. sec. 186 8

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioners, Madalyn Murray O'Hair, Jon Garth Murray et al, pray (excuse the expression) that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in this cause on February 5, 1979, affirming an order and judgment which dismissed Petitioners' Bill of Complaint by the United States District Court for the Western District of Texas, Austin Division.

OPINIONS BELOW

The judgment and opinion of the Court of Appeals is reported in 588 F 2d 1144, under the incorrect styling of O'Hair v. Murray, (see Appendix p.12a). The judgment and opinon of the United States District Court, Western District of Texas, Austin Division is reported in 462 F.Supp 19, (see Appendix p. 7a), under the correct styling of O'Hair v. Blumenthal.

JURISDICTION

The jurisdiction of this Court is invoked on the grounds that the United States Court of Appeals for the Fifth Circuit has decided a federal question of establishment of religion in conflict with applicable legal standards derived in decisions of this Court, or has sanctioned a departure from such standards and decisions by a lower court, so as to call for an exercise of this Court's power of supervision.

The judgment of the Court of Appeals is dated and was entered February 5, 1979. Jurisdiction of this Court is timely and invoked under *28 U.S.C.A. sec. 2101 (c)* and *28 U.S.C.A. sec. 1254 (1)* in light of *Rule 19-1(b)* of the *Rules of the Supreme Court of the United States.*

QUESTIONS PRESENTED

Whether 36 U.S.C. 186, which states in its entirety **"The national motto of the United States is declared to be 'In God we Trust'."**

[1] has a clearly secular purpose;

[2] advances religion;

[3] in its use, especially, in the imprinting of the motto on currency and coins, entangles government with religion excessively?

Whether 31 U.S.C. 324(a) which states in its entirety **"At such time as new dies for the printing of currency are adopted, the dies shall bear, at such place or places thereon as the Secretary of the Treasury may determine to be appropriate, the inscription 'In God We Trust', and thereafter this inscription shall appear on all United States currency and coins."**

[1] has a clearly secular purpose;

[2] advances religion;

[3] entangles government with religion excessively?

Whether 36 U.S.C. 324, in that part which states, **"The motto 'In God we trust' shall be inscribed on all coins."**

[1] has a clearly secular purpose;,

[2] advances religion;

[3] entangles government with religion execssively?.

Whether 18 U.S.C. 331 and 333 which enforces 36 U.S.C. 324 and 324(a) against Atheist disfigurement of currency and coins by obliteration of the words 'In God we trust' is violative of the Free Speech clause of the First Amendment to the Constitution of the United States?.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This case involves the First Amendment to the Constitution of the United States (see appendix p. 3a), 18 U.S.C. Sec. 331 and 333 (see appendix p.3a), 31 U.S.C. Sec. 324 and 324(a) (see appendix p. 3a) and 36 U.S.C. Sec. 186 (see appendix p.3a).

STATEMENT OF THE CASE

The Petitioners, Madalyn Murray O'Hair and Jon Garth Murray, et al, filed their original and amended complaint with the United States District Court for the Western District of Texas, Austin Division, on 1 September 1977, invoking jurisdiction under 28 U.S.C. sections 1331, 1346(2) and 1402(a)(1), asking that 36 U.S.C. section 186 and 31 U.S.C. sections 324 and 324(a) be declared unconstitutional on the grounds that these laws, together with the enforcement aspect of 18 U.S.C. sections 331 and 333 violate the free exercise, free speech and establishment clauses of the First Amendment to the United States and that an injunction be issued restraining the Respondents, W. Michael Blumenthal, Secretary of the Treasury and

James A. Conlon, Director of Engraving and Printing from inscribing any religious slogans on United States obligations, currency or coins or using the theological motto "In God we trust" in any official manner whatsoever. Petitioners also asked for costs, attorney fees, expenses, and other such relief as the court deemed proper under 28 U.S.C. section 2412.

Respondants filed a Motion to Dismiss and a Supplemental Motion to Dismiss on the grounds that the Petitions lacked standing and that the Complaint failed to state a claim upon which relief may be granted.

Without a hearing on the motion, the District Court issued an Order and Judgment on 17 April, 1978, 462 F. Supp. 19, dismissing, holding that the Complaint failed to state a claim upon which relief could be granted and writing an opinion to the merits, applying the tests of constitutionality outlined in Committee for Public Education and Religious Liberty v. Nyquist, 413 U.S. 756 (1973) and holding that the challenged laws were constitutional.

Petitioners appealed to the United States Court of Appeals, Fifth Circuit, which court, by James P. Coleman, U. S. Circuit Judge, approved a motion to intervene by a clergyman, J. G. Whitfield.

Pending appeal of this case, the U. S. Congress passed P.L. 95-447. On 10 October, President Carter signed this bill authorizing the Secretary of the Treasury to replace the current dollar coin with a specially designed, octagonal, Susan B. Anthony coin, which under 31 U.S.C. sections 324 and 324(a) would also bear the theological motto, "In God we trust." A Motion for Injuntion was filed 14 December, 1978 by Petitioners, with the United States Court of Appeals, Fifth Circuit, with jurisdiction under 28 U.S.C. section 1331(a) and Rule 65(a) Federal Rules of Civil Proceedure, reaffirming all First Amendment claims and seeking to temporarily restrain Respondents from the expenditure of millions of dollars in minting and flooding the country with the new coin until a final hearing and determination of this case now pending on appeal could be had.

Twenty seven national Atheist organizations and twenty one international "free world" Atheist organizations as well as over 200 individual Atheists from all states of the union joined in the request for injunction.

The Petitioners' Motion for Injunction Pending Appeal was denied on 2 January, 1979.

Under Local Rule 18, the United States Court of Appeals, 5th Circuit, on 18 January, 1979, tranferred the pending case to the Summary Calendar for disposition and on 5 February, 1979 affirmed the opinion of the District Court, 588 F.2d 1144. Therefore, Petitioners now file this Petition for Writ of Certiorari to issue to the United States Court of Appeals for the Fifth Circuit.

REASONS FOR GRANTING THE WRIT

Thomas Jefferson has succinctly put forward the plea of the Petitioners: that it is "sinful and tyrannical" to compel a man to "the propagation of opinions which he disbelieves and abhors." Jefferson's Bill for Establishing Religious Freedom, introduced 1779, passed 1786 by Assembly of Virginia.

In making its decision the District Court did not consider or accept any evidence, oral or written, as to the impact upon the freedom of conscience of Atheists who are compelled to carry upon their body in their clothing, or in accompanying purses, government sponsored religious sloganing which they abhor. In the ordinary course of daily life they are, many times each day, forced to broadcast a trust in God in their unavoidable handling of the coin of the realm. The unique and first impression question before the United States Supreme Court is: does the concept "freedom of religion" contain within its precepts the rights of Atheists to "freedom from religion."

Although the First Amendment to the Constitution of the United States contains the word "religion" our court of last resort has never set forth with specificity a workable legal definition thereof, often taking great pains to be intentionally open-

ended or non-specific. Linguistic adroitness characterizes many, if not most, or all, decisions in this area.

In this case, the District Court avoided any effort to establish the intent of the United States Congress when the subject laws were passed becuse the congressional records so clearly and so embarrassingly show that it was to establish a "Christian" nation. (Report of Comm. on Coinage, Weights and Measures, to accompany H.R. 17296, 1908; Congressional Record, 7 June 1955, pp 7795-6).

The trial court did not consider or accept any evidence as to whether the slogan or motto "In God we trust" had theistic, theological, patriotic or ceremonial implications. If even a standard dictionary had been consulted, a man-in-the street testimony taken, as to the import of the words to any reasonably prudent person, a different opinion would have necessarily followed.

The Petitioners are Atheists and citizens whose patriotism is impuned when the government legislates that "we" i.e, the citizens of this nation, "trust in God," since the Petitioners have no such trust.

The argument is made that the motto is de minimus, insignificant. Yet much time of both houses of the United States Congress was invested in the passage of the legislation, great costs were borne to change designs and dies to strike coins or imprint obligations, excessively involving government to the endorsement and distribution of the motto.

The religious community has invested much concern toward the capturing of our nation's symbols, for following that the task of obtaining tax money is easier.

Our nation has the oldest, extant, viable, still operable Constitution in the world, emulated by literally hundreds of nations. This was developed by unique politically astute statesmen, who set our nation apart from every other prior-existing government in the stream of human history, by their insistence upon the concept of separation of state and church, of religion and government.

The United States of America is a major world power, with the eyes of all nations focused upon it. A test, observed internationally, is here before the court: do human and civil rights extend to American Atheists? May they be brought to the compulsion of affirming by daily use of religiously inscribed coins and currency an opinion which they "disbelieve and abhor?" Are Jeffersonian concepts alive and well, or has antidisestablishmentarianism won the day?

There has been much media discussion that the United States Supreme Court is afraid of the issue of Atheist civil libertarian rights in a time full of the mystique of born-again Christianity. Your Petitioners may have no trust in God, but in this instance, somewhat warily, they do place their trust in the United States Supreme Court.

More fanciful than real would be the distinction between this action and the same issue decided in Wooley v. Maynard 430 U.S. 705 where the First Amendment protected rights of a citizen were violated by a state's requirement that his automobile license place carry offensive ideology.

If erection of a nativity scene, as a religious monument, is excessive entanglement of government and religion as in Allen v. Morton 495 F2d 65 when a few employees' salaries are temporarily devoted to the project, how much more is the entanglement when millions of dollars are required to place the theological slogan on all currency and coin of the realm? The monumental expense of placing these words on all currency was noted by the Senate Committee Report, 31 U.S.C. †324, when the committee reflected, "One reason that this situation (i.e. absence of the words "In God We Trust" on all currency) has not been remedied heretofore has been the prohibitive cost involved in the necessary redesigning of the dies used in printing currency."

If a school teacher has a right to refuse to utter words offensive to her in saying the pledge of allegiance, Russo v. Central School District, 469 F2d 623, is it then the inevitable conclu-

sion that the same ideological aggression by the government need not be directed to all the nation's Atheist and non-theists on a daily basis to satisfy the political and spiritual fashions of those religionists who may be pleased by the ego-security of official recognition of their theology.

First Amendment protected rights are not to be disregarded me , because of the unpopularity of their exercise by a minority. Tinker v. Des Moines 393 U.S. 503.

Freedom of religion is surely freedom from religious aggression of those who would read Bibles to a captive audience in public schools, School District of Abington v. Schempp, 374 U. S. 203; who would force Jehovah's Witnesses to sing the national anthem, Sheldon v. Fannin, 221 F. Supp 766; who would require an oath "So help me God" for admission to practice law in Alabama, Nicholson v. Alabama Bar Association 338 F. 48, who would force others to utter that which is not in their minds. West Virginia State Board of Education v. Barnette, 319 U.S. 624, who would require a Seventh Day Adventist to work on Sunday, Sherbert v. Verner, 374 U.S. 398; who would require affirmation of offensive beliefs to hold public office, Torcasco v. Watkins 364 U.S. 488.

Attention of the Court is also directed to those other cases upholding First Amendment rights: Engle v. Vitale, 370 U.S. 421, Everson v. Board of Education, 330 U.S. 1, Lemon v. Kurtzman, 403 U.S. 602, Epperson v. Arkansas, 393 U.S. 421, to name but a few.

Atheists have no escape, no alternate lifestyle, which would allow them to avoid the daily use of theological currency which plainly states that they, as patriotic Americans, must not only believe in God but must pay for placing the motto indicating the same on the money as well.

If it is argued that the ceremonial purpose of the national motto is secular it should be remembered that "The First Amendment prohibits a governmental agency from attempting to effect a secular goal by the propagation of a religious concept." Malnak v. Yogi, 440 F. Supp. 1284 (later reported 592 F2d 197).

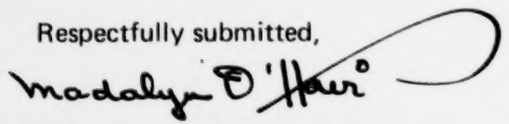
If on our currency there was an inscription, "There is no God in which you can trust." would not the constitutional rights of Christians receive the attention of this honorable court through grant of writ of certiorari?

The decisions below directly conflict with the tests prescribed by this court to measure legislation as an establishment of religion promulgated in the Walz, Schempp, Lemon and Nyquist, cases and should, therefore, be reviewed.

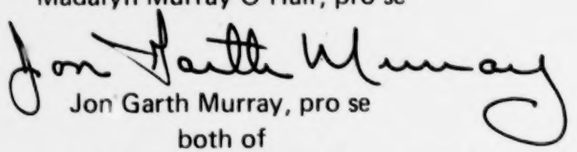
CONCLUSION

For these reasons the writ of certiorari should be issued to review the judgment and opinion of the Court of Appeals for the Fifth Circuit.

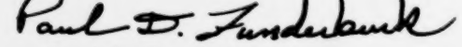
Respectfully submitted,



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3 April 1979

INTERESTED PERSONS

Under Rule 46, United States Supreme Court Rules, the following persons, all of P. O. Box 2117, Austin, Texas, 78768, join in the petition for writ of certiorari:

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The American Atheist Museum
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American Atheist Women
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The New Humanists
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Vapaa Ajatteliga
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Philippines Atheist Society
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I, Paul D. Funderburk, attorney for Society of Separationists, Inc., et al, several of the petitioners herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the 3rd day of April, 1979, I served copies of the foregoing Petition for Writ of Certiorari on the several parties thereto, by mailing a copy in a duly addressed envelope, with postage prepaid to:

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Appendices

APPENDICES
INDEX

First Amendment	3a
36 U.S.C. 186, National Motto	4a
31 U.S.C. 324, Inscriptions on Coins	4a
31 U.S.C. 324(a), Inscriptions on Currency and Coins	4a
18 U.S.C. 331, Mutilation, Diminution and Falsification of Coins	5a
18 U.S.C. 333, Mutilation of National Bank Obligations	5a
H.R. 12788–S3036, Susan B. Anthony Dollar Coin Act of 1978	6a
Judgment, United States District Court	7a
Opinion, United States District Court	8a
Judgment, Preliminary Injunction, U.S. Ct. of Appeals	11a
Judgment, U. S. Ct. of Appeals	12a

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

FIRST AMENDMENT CONSTITUTION OF THE UNITED STATES

Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press, or the right of the people peaceably to assemble and to petition the government for a redress of grievances.

36 U.S.C. 186
NATIONAL MOTTO

The national motto of the United States is declared to be "In God we trust."
July 39, 1956, c. 795, 70 Stat. 732.

31 U.S.C. 324
INSCRIPTIONS ON COINS

Upon one side of all coins of the United States there shall be an impression emblematic of liberty, with an inscription of the word "Liberty", and upon the reverse side shall be the figure or representation of an eagle, with the inscriptions "United States of America" and "E Pluribus Unum" and a designation of the value of the coin; but on the dime, 5-, and 1-cent piece, the figure of the eagle shall be omitted. The motto "In God we trust" shall be inscribed on all coins. Any coins minted after July 23, 1965, from 900 fine coin silver shall be inscribed with the year 1964. All other coins shall be inscribed with the year of the coinage or issuance unless the Secretary of the Treasury, in order to prevent or alleviate a shortage of coins of any denomination, directs that coins of that denomination continue to be inscribed with the last preceding year inscribed on coins of that denomination.
R.S. †3517; Sept. 26,1890, c.945, †1, 26 Stat. 485; May 18, 1908, c. 173, † 1,35 Stat. 164; Jan. 30, 1934, c. 6, † 5, 48 Stat. 340; July 23, 1965, Pub.L. 89-91, Title II, † 204(a), 79 Stat. 256; June 24, 1967, Pub.L. 90-29, † 5, 81 Stat. 77; Dec. 31, 1970, Pub.L. 91-607, Title II, † 206, 84 Stat. 1769.

31 U.S.C. 324a
INSCRIPTION ON CURRENCY AND COIN

At such time as new dies for the printing of currency are adopted, the dies shall bear, at such place or places thereon as the Secretary of the Treasury may determine to be appropriate,

the inscription "In God We Trust", and thereafter this inscription shall appear on all United States currency and coins.
July 11, 1955, c. 303, 69 Stat. 290.

18 U.S.C. 331
MUTILATION, DIMINUTION, AND FALSIFICATION OF COINS

Whoever, fraudulently alters, defaces, mutilates, impairs, diminishes, falsifies, scales, or lightens any of the coins coined at the mints of the United States, or any foreign coins which are by law made current or are in actual use or circulation as money within the United States; or

Whoever fraudulently possesses, passes, utters, publishes, or sells or attempts to pass, utter, publish, or sell, or brings into the United States, any such coin, knowing the same to be altered, defaced, mutilated, impaired, diminished, falsified, scaled or lightened –

Shall be fined not more than $2,000 or imprisoned not more than five years, or both.
June 25, 1948, c. 645, 62 Stat. 700; July 16, 1951, c. 226, † 1, 65 Stat. 121.

18 U.S.C. 333
MUTILATION OF NATIONAL BANK OBLIGATIONS

Whoever mutilates, cuts, defaces, disfigures, or perforates, or unites or cements together, or does any other thing to any bank bill, draft, note, or other evidence of debt issued by any national banking association, or Federal Reserve bank, or the Federal Reserve System, with intent to render such bank bill, draft, note, or other evidence of debt unfit to be reissued, shall be fined not more than $100 or imprisoned not more than six months, or both.
June 25, 1948, c. 645, 62 Stat. 700

H. R. 12788
S. 3036

An Act to amend the Coinage Act of 1965 to change the size, weight, and design of the one-dollar coin, and for other purposes.

Be it enacted by the Seante and House of Representatives of the United States of America in Congress assembled,

SECTION 1. This Act may be cited as the "Susan B. Anthony Dollar Coin Act of 1978".

SEC. 2 Section 101(c)(1) of the Coinage Act of 1965, as amended (31 U.S.C. 391(c)(1)) is amended by striking out "1.500" and inserting in lieu thereof "1.043" and by striking out "22.68" and inserting in lieu thereof "8.1".

SEC. 3 The one-dollar coin authorized by section 101(c) of the Coinage Act of 1965, as amended by section 2, shall bear on the obverse side the likeness of Susan B. Anthony, and shall bear on the other side a design which is emblematic of the symbolic eagle of Apollo 11 landing on the moon.

SEC 4. Section 203 of the Act of December 31, 1970 (31 U.S.C. 324b), is amended by striking out "initially" and by inserting "(d)" after "section 101".

SEC 5. Until January 1, 1979, the Secretary of the Treasury may continue to mint and issue one-dollar coins authorized under section 101 (c)(1) of the Coinage Act of 1965, as such section was in effect immediately prior to the date of enactment of this Act.

Passed the Senate August 22 (legislative day, August 16), 1978.

Attest: J. S. KIMMITT
Secretary

UNITED STATES DISTRICT COURT
for the
WESTERN DISTRICT OF TEXAS – AUSTIN DIVISION

Madalyn Murray O'Hair et al
v.
W. Michael Blumenthal, et al

Civil Action File No A-77-CA-166

JUDGMENT

This action came on for trial before the Court, Honorable Jack Roberts, United States District Judge, presiding, and the issues having been duly tried and a decision having been duly rendered,

It is Ordered and Adjudged that the complaint is DISMISSED for failure to state a claim.

Dated at Austin, Texas, this 17th day of April, 1978.

Dan W. Benedict
Clerk of Court
Wanda V. Peterson,
Deputy Clerk

UNITED STATES DISTRICT COURT
for the
WESTERN DISTRICT OF TEXAS – AUSTIN DIVISION

Madalyn Murray O'Hair et al.	Plaintiff	*
		* CIVIL ACTION NO
v.		* A-77-CA-166
W. Michael Blumenthal, et al	Defendant	*

ORDER

Defendant's (sic) have moved to dismiss this suit, which makes allegations concerning the constitutionality of the national motto "In God We Trust," and specifically the use of that motto on national coin and currency. Plaintiffs have first alleged that 36 U.S.C. †186, the statute making "In God We Trust" the national motto, is unconstitutional in that it violates the free exercise and establishment clauses of the First Amendment. On the same grounds they challenge 31 U.S.C. †† 324 and 324(a), the statutes mandating the imprinting of the motto on the coin and currency of the United States. Plaintiffs have finally asserted that 18 U.S.C. †† 331 and 333 violate the free speech and free exercise clauses of the First Amendment because they attach criminal penalties to the removal of the national motto from United State coin and currency. (The statutes last brought into question in fact generally prohibit the defacement of coin and currency.) These claims raise basically the same constitutional issues, and the Court will therefore not address the three claims separately, but rather will treat them as as whole.

The Court recognizes that to be valid under the establishment clause a challenged law must (1) reflect a clearly secular purpose, (2) have a primary effect that neither advances nor inhibits religion, and (3) avoid excessive government entanglement in religion.

That the challenged laws do not in fact run afoul of these proscriptions has in fact already been decided by the Ninth Circuit in the case of Aronow v. United States, 432 F.2d 242 (9th Cir. 1970). In that case the Ninth Circuit held that the "national motto and the slogan on coinage and currency "In God We Trust" has nothing whatsoever to do with the establishment of religion. Its use is of a patriotic or ceremonial character and bears no true resemblance to a governmental sponsorhip of a religious exercise." 242 F.2d at 243. From this it is easy to deduce that the Court concluded that the primary purpose of the slogan was secular; it served a secular ceremonial purpose in the obviously secular function of providing a medium of exchange. As such it is equally clear that the use of the motto on the currency or otherwise does not have a primary effect of advancing religion. Moreover, it would be ludricous to argue that the use of the national motto fosters any excessive government entanglement with religion. Thus we agree with the Ninth Circuit in concluding that no claim for relief has been stated in this complaint. As that Circuit noted, "[w]hile "ceremonial" and "patriotic" may not be particularly apt words to describe the category of the national motto, it is excluded from First Amendment significance because the motto has no theological or ritualistic impact." 432 F.2d at 243.

The Court notes that language in Supreme Court cases also indicates that the national motto, and its use on coin and currency, does not infringe on First Amendment rights. In School District of Abington Township v. Schempp, 374 U.S. 203 (1963), which prohibited compulsory reading of the Bible in public schools, the Court recognized that in the national public life there are many manifestations of a belief in a Supreme Being which do not violate the First Amendment. As Justice Brennan explained in a concurring opinion, these various activities include the use of the motto "In God We Trust." "It is not that the use of these four words can be dismissed as 'de minimis' . . . The truth is that we have simply interwoven the motto so deeply into the fabric of our civil polity that its present use may well not present that type of involvement which the First

Amendment prohibits." 374 U.S. at 303.

The Court has more recently spoken on the use of the national motto on coin and currency in the case of Wooley v. Maynard, 430 U.S. 705 (1977), which held that a state, consistent with the First Amendment, could not require the display of a state motto on vehicle license plates. There the Court said:

> It has been suggested that today's holding will be read as sanctioning obliteration of the National Motto, 'In God We Trust' from the United States coins and currency. That question is not before us today but we note that currency, which is passed from hand to hand, differs in significant respects from an automobile, which is readily associated with its operator. Currency, is generally carried in a purse or pocket and need not be displayed by the public. The bearer of currency is thus not required to publicly advertise the National Motto.

430 U.S. at 717, n. 15.

The language of Justice Rehnquist, in his dissent, is especially relevant to Plaintiffs' claims that penalties for defacing the motto on the coins and currency are unconstitutional: "I cannot imagine that the statutes, see 18 U.S.C. ††331 and 333, proscribing defacement of United States currency impinge upon the First Amendment rights of an atheist. The fact that an atheist carries and uses United States currency does not, in any meaningful sense, convey an affirmation of belief on his part in the motto "In God We Trust." " Id. at 722.

For these reasons the Court if (sic) of the opinion that the complaint fails to state a claim upon which relief can be granted, and the complaint is therefore DISMISSED.

Enter this 17 (sic) day of April 1978, at Austin, Texas.

Jack Roberts
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Madalyn Murray O'Hair,
and
Jon Garth Murray, et al
Plaintiff-Appellants
v.
W. Michael Blumenthal, et al
Defendant-Appellee

File Mark: 2 January, 1979

No. 78-2101

It is ORDERED that Appellant's petition for injunction pending appeal is DENIED.

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Thornberry, J.
Godbold, J.
Rubin, J.

(The above document is reproduced from verbal information only from the office of the Clerk of the U.S. Court of Appeals, 5th Circuit, as the document was not available to Appellant.)

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Madalyn Murray **O'HAIR**, and Jon Garth **MURRAY**, et al. ,
Plaintiffs-Appellants
v
W. Michael **BLUMENTHAL**, Secretary of the Treasury, et al.
Defendants-Appellees.
No. 78-2101
Summary Calendar.*
February 5th, 1979

Appeal from the United States District Court for the Western District of Texas; Jack Roberts, Judge.

Before THORNBERRY, GODBOLD and RUBIN, Circuit Judges.

PER CURIAM:

Plaintiffs question the constitutionality of 36 U.S.C. † 186 making "In God We Trust" a national motto; of 31 U.S.C. †† 324 and 324(a) requiring the imprinting of the motto on the coin and currency of the United States; and of 18 U.S.C. ††331 and 333, which provide criminal penalties for removal of the national motto from United States coin and currency.

Pretermitting the issues of standing and case or controversy, which are not free from doubt, we affirm on the opinion of the district court, O'Hair et al v. Blumenthal et al., 462 F. Supp. 19, (W.D.Tex., 1978).

*Rule 18, 5 Cir.; see Isbell Enterprises, Inc. v. Citizens Casualty Co. of New York et al., 5 Cir. 1970, 431 F.2d 409, Part I.

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1978

Supreme Court, U. S.
FILED
JUN 5 1979
MICHAEL RODAK, JR., CLERK

No. 78-1683

MADALYN MURRAY O'HAIR

and

JON GARTH MURRAY, ET AL.,

Petitioners,

vs.

W. MICHAEL BLUMENTHAL, SECRETARY
OF THE TREASURY, ET AL.,

Defendants.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF FOR J. G. WHITFIELD, INTERVENOR

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SUPREME COURT OF THE UNITED STATES
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Table Of Contents

	Page
Table Of Contents	i
Index of Authorities	ii
OPINIONS BELOW	1
JURISDICTION	2
QUESTIONS PRESENTED	2
STATEMENT	3
REASONS FOR DENYING THE WRIT . .	5
CONCLUSION	14

Index Of Authorities

	Page
CASES	
Aronow v. United States, 432 F.2d 242 (9th Cir. 1970)	9
Conley v. Gibson, 355 U.S. 41, 78 S. Ct. 99 (1957)	14
Engel v. Vitale, 370 U.S. 421, 82 S. Ct. 1261 (1962) . . .	9
Lemon v. Kurtzman, 403 U.S. 602, 91 S. Ct. 2105 (1971) . . .	11
O'Hair v. Blumenthal, 462 F. Supp. 19 (W.D. Tex 1978) . .	2
O'Hair v. Blumenthal, 588 F.2d 1144 (5th Cir. 1979)	1,9
School District of Abington Township, Pa. v. Board of Education, 333 U.S. 203, 68 S. Ct. 461 (1948)	9,10, 13
Walz v. Tax Commission of N.Y., 397 U.S. 664, 90 S. Ct. 1409 (1970)	12,13
Wooley v. Maynard, __ U.S. ___, 97 S. Ct. 1428 (1977) . . .	7,8,9
Zorach v. Clauson, 343 U.S. 306, 72 S. Ct. 679 (1952) . . .	10

Page

STATUTES

18 U.S.C. 331 2

18 U.S.C. 333 2

28 U.S.C. 1254(1) 2

28 U.S.C. 1331 3

28 U.S.C. 1346(2) 3

28 U.S.C. 1402(a)(1) 3

31 U.S.C. 324 3,4

31 U.S.C. 324(a) 2,4

36 U.S.C. 186 2,4

IN THE

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1978

No. 78-1683

MADALYN MURRAY O'HAIR

and

JON GARTH MURRAY, ET AL.,

Petitioners,

vs.

W. MICHAEL BLUMENTHAL, SECRETARY OF THE TREASURY, ET AL.,

Defendants.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR J. G. WHITFIELD, INTERVENOR

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 588 F.2d 1144.

The opinion of the district court is reported in 462 F. Supp. 19.

JURISDICTION

The judgment of the Court of Appeals was entered February 5, 1979. The Petition for a Writ of Certiorari was filed on May 7, 1979. The jurisdiction of this Court is invoked under 28 U.S.C.A. 1254(1).

QUESTIONS PRESENTED

1. Whether 18 U.S.C. 331 and 333 violate the Free Speech Clause of the First Amendment of the Constitution of the United States.

2. Whether 36 U.S.C. 186 violates the Establishment Clause of the First Amendment of the Constitution of the United States.

3. Whether 31 U.S.C. 324(a) violates the Establishment Clause of

the First Amendment of the Constitution of the United States.

4. Whether 31 U.S.C. 324, in that part which states, "The motto 'In God We Trust' shall be inscribed on all coins" violates the Establishment Clause of the First Amendment to the Constitution of the United States.

STATEMENT

Madalyn Murray O'Hair and Jon Garth Murray, Petitioners, filed their Original Complaint against W. Michael Blumenthal, et al., in this cause on September 1, 1974, which they amended on January 18, 1978, in the United States District Court for the Western District of Texas, Austin Division, invoking jurisdiction of that Court pursuant to 28 U.S.C. 1331 and 1346(2), and 28 U.S.C. 1402(a)(1). They asked

(1) that 31 U.S.C. 324 and 324(a) and 36 U.S.C. 186 be declared unconstitutional; (2) that Defendants be enjoined from enforcing 31 U.S.C. 324 and 324(a); and, (3) that Defendants be enjoined from using the National Motto "In God We Trust" in any way. The United States filed a Motion to Dismiss and Supplemental Motion to Dismiss on the grounds that Petitioners lacked standing and had failed to state a claim upon which relief could be granted.

On April 17, 1978, the district court granted the Motion to Dismiss, holding that Petitioners had failed to state a claim upon which relief could be granted. The district court concluded that the National Motto is ceremonial in nature and its present use has no religious significance or

impact; thus, its existence and use is not violative of the Establishment Clause. That Court also concluded that its inscription on coins and currency did not infringe upon anyone's right to freedom of speech. Petitioners timely filed their Notice of Appeal to the Fifth Circuit on May 16, 1978. On June 5, 1978, the Fifth Circuit granted J. G. Whitfield leave to intervene. Contrary to Petitioners' assertion, Intervenor is not a clergyman.

The Court of Appeals, on February 5, 1979, in a per curiam decision, affirmed the decision of the district court.

REASONS FOR DENYING THE WRIT

The primary thrust of Petitioners' Petition for Certiorari is their

contention that somehow they are compelled to espouse the literal meaning of the National Motto "In God We Trust" in violation of the First Amendment Free Speech Clause by their use of coins and currency bearing the phrase. As the Supreme Court has indicated, their position is without merit.

A necessary postulate for the Petitioners' position is that in using and carrying coins and currency Petitioners are affirming or propagating the ideals which may underlie any inscriptions located thereon. However, the mere use and handling of coins and currency lack an element necessary to the existence of an affirmation of belief--a communication or a communicative act. When one carries or uses coins, one clearly

does not "say" anything, nor is such activity the sort that would convey a communication. Consequently, there is no affirmation of belief in the literal meaning of "In God We Trust" when one uses or carries coins or currency.

The Supreme Court apparently arrived at this very conclusion in Wooley v. Maynard, ___ U.S.___, 97 S. Ct. 1428 (1977). Although the Court held that the required display of a state motto on a car license plate had the effect of making the owner of that automobile "an instrument for fostering public adherence" to the viewpoint expressed in the state motto, the Court was careful to ground its decision on the unique medium used by New Hampshire, the automobile. The Court explicitly noted the difference in character between an automobile and

coins and currency in footnote 15 of its opinion.

> It has been suggested that today's holding will be read as suggesting the obliteration of the National Motto, 'In God We Trust,' from United States coins and currency. That question is not before us today but we note that currency, which is passed from hand to hand, differs in significant respects from an automobile, which is readily associated with its operator. Currency is generally carried in a purse or pocket and need not be displayed to the public. The bearer of currency is thus not required to publicly advertise the National Motto. Wooley v. Maynard, supra at _____, n.15, 97 S. Ct. at 1436, n.15.

The essential underpinning to the Court's rationale in Wooley was the fact that an individual was required to publically advertise the state's message. This essential fact, as the Court observed, is not present in the case of bearing currency; consequently

there is no required affirmation of belief or opinion. See Wooley v. Maynard, supra (Rehnquist dissenting).

Petitioners speak of the right of "freedom from religion." The only "freedom from religion" under the Constitution is that which is embodied in the Establishment Clause: freedom from the establishment of religion by the government. The statutes of which Petitioners complain do not violate the Establishment Clause as the Ninth and Fifth Circuits have held, Aronow v. United States, 432 F.2d 242 (9th Cir. 1970); O'Hair v. Blumenthal, 588 F.2d 1144 (5th Cir. 1979), and as the Supreme Court has indicated. Eg., School District of Abington Township, Pa. v. Schempp, 374 U.S. 203, 83 S. Ct. 1560 (1963) (Brennan, J., concurring), Engel v. Vitale, 370 U.S. 421 at 435,

n.21, 82 S. Ct. 1261, at 1269, n.21 (1962); Zorach v. Clauson, 343 U.S. 306, 72 S. Ct. 679 (1952).

The simple truth is the National Motto is nothing more than that, a national motto. It has no religious significance; its importance lies in its ceremonial or patriotic value as a reflection of this country's religious heritage. Justice Brennan stated this fact succinctly in School District of Abington Township Pa. v. Schempp, supra:

> This rationale [that the Establishment Clause does not prohibit government action simply because it harmonizes with some religious doctrine] suggests that the use of the motto "In God We Trust" on currency, on documents and public buildings and the like may not offend the clause . . . . The truth is that we have simply interwoven the motto so deeply into the fabric of

> our civil polity that its present use may well not present the type of involvement which the First Amendment prohibits. 374 U.S. at 303, 83 S. Ct. at 1614.

Absent any realistic religious connotations in the National Motto, there can be no violation of the Establishment Clause.

A quick glance at the National Motto through the trifocal lenses of the Establishment Clause test set out in Lemon v. Kurtzman, 403 U.S. 602, 612-13, 91 S. Ct. 2105 at 2111 (1971) clearly shows the lack of merit in Petitioners' position. The secular purpose is clear: adopt a motto that will inspire the American public. A motto which reflects the historical fact that this country has a strong religious heritage serves this purpose. This country's religious heritage is

a source of pride for most Americans, even if individually they do not share the actual religious beliefs of their forefathers. The National Motto's primary effect neither advances nor inhibits religion; rather, it stirs the patriotic heartstrings of Americans as they are reminded of the powerful strength of the convictions held by their ancestors. Finally, the passive use of the National Motto offers no danger of entanglement of the State with religion.

Also demonstrative of the weakness of Petitioners' arguments is an analysis of the National Motto in the context of the objective of the Establishment Clause, the prevention of "sponsorship, financial support and active involvement of the sovereign in religious activity." Walz v. Tax

Commission of N.Y., 397 U.S. 664, 668, 90 S. Ct. 1409, 1411 (1970). By no stretch of the imagination could one conclude that the adoption of the National Motto and its inscription on coins and currency realistically involve any one of these dangers. As Justice Goldberg so aptly stated in his concurrence in School District of Abington Township, Pa. v. Schempp, supra at 208, 83 S. Ct. 1560, 1616:

> The First Amendment does not prohibit practices which by any realistic measure create none of the dangers which it is designed to prevent and which do not so directly or substantially involve the state in religious exercises or in the favoring of religion as to have meaningful and practical impact. It is of course true that great consequences can grow from small beginnings, but the measure of constitutional adjudication is the ability and willingness to distinguish between real threat and mere shadow.

Supreme Court precedent indicates that beyond any shadow of doubt Petitioners would be unable to prove a set of facts in support of their claim which would entitle them to relief. The dismissal of their claim by the district court and its affirmance by the Fifth Circuit was correct in every respect. Conley v. Gibson, 355 U.S. 41, 45-6, 78 S. Ct. 99, 102 (1957).

CONCLUSION

For the reasons stated hereinabove, Petitioners' Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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June 4, 1979